



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 202, 205, 212, 237, and 252**

**[Docket DARS-2015-0055]**

**RIN 0750-AI78**

**Defense Federal Acquisition Regulation Supplement: Food  
Services for Dining Facilities on Military Installations (DFARS  
Case 2015-D012)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide policy and procedures for soliciting offers, evaluating proposals, and awarding contracts for the operation of a military dining facility pursuant to the Randolph-Sheppard Act; the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; the Joint Report and Policy Statement issued pursuant to the NDAA for FY 2006; and the Committee for Purchase from People Who Are Blind or Severely Disabled statute.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS case 2015-D012 by any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D012" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D012" on your attached document.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, telephone 571-372-6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In order to clarify the application of the Randolph-Shepard Act (R-S Act) (20 U.S.C. 107, et seq.) and the Committee for Purchase from People Who Are Blind or Severely Disabled (CFP) statute (41 U.S.C. 8501, et seq.) formerly known as the Javits-Wagner-O'Day (JWOD) Act, to the operation and management of military dining facilities, DoD is proposing to amend the DFARS to implement the provisions of the Joint Report and Policy Statement (Joint Policy Statement) issued by DoD, the Department of Education (DoED), and the CFP pursuant to section 848 of the NDAA for FY 2006.

The Joint Explanatory Statement to Accompany the NDAA for FY 2015 requested that DoD prescribe implementing regulations for the application of the R-S Act and the CFP statute to contracts awarded for the operation of military dining facilities, and that the regulations address DoD contracts not covered by section 856 of the NDAA for FY 2007.

Pursuant to the Joint Policy Statement, the R-S Act applies to contracts for the operation of a military dining facility, also known as full food services, while the CFP statute applies to contracts and subcontracts for dining support services (including mess attendant services).

The CFP statute, implemented in FAR subpart 8.7, requires Federal agencies to acquire from participating nonprofit agencies all supplies or services on the Procurement List

established by the CFP. The purpose of the CFP statute is to provide employment opportunities for people who are blind or have other severe disabilities. If a product or service is on the Procurement List, 41 U.S.C. 8504(a) requires the procuring agency to procure that product or service either from a qualified nonprofit agency for the blind or a qualified nonprofit agency for the severely disabled in accordance with CFP regulations. However, 41 U.S.C. 8504(b) provides an exception to section 8504(a) for a product that is available from an industry established under 18 U.S.C. 307 (Federal Prison Industries) and shall be procured from that industry pursuant to 18 U.S.C. 4124.

Section 107(b) of the R-S Act establishes a priority authorizing blind persons, licensed by a State licensing agency (SLA) to operate one or more vending facilities, wherever feasible, on Federal properties. Section 107d-3(e) of the R-S Act requires the Secretary of Education (the Secretary) to promulgate regulations (see 34 CFR 395.33) establishing a priority for the operation of cafeterias when the Secretary determines on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of high quality comparable to that currently provided employees.

Pursuant to 34 CFR 395.33(a), the priority is afforded to the SLA when the Secretary determines, in consultation with the

contracting officer, that the operation can be provided at a reasonable cost, with food of a high quality that is comparable to the food currently provided to employees. 34 CFR 395.33(b) requires Federal contracting officers to consult with the Secretary (see 395.33(a)) when the contracting officer has determined that an SLA's response to a solicitation for the operation of a cafeteria is within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award. The evaluation criteria established in a solicitation may include sanitation practices, personnel, staffing, menu pricing, and portion sizes, menu variety, budget, and accounting practices.

During the 1990s, confusion arose as to whether contracts for food services at military dining facilities should be subject to the CFP statute or the R-S Act. There was also confusion as to whether the SLA must be awarded a contract if its proposal is within the competitive range. In order for an SLA's proposal to be selected, the proposal must not only be in the competitive range, but also be ranked among those proposals which have a reasonable chance of being selected for final award. Placement in the competitive range alone does not mean an offer has been found competitive, comparable, acceptable, or reasonable for final award.

In order to resolve the confusion, section 848 of the NDAA for FY 2006 required DoD, DoED, and the CFP to issue the Joint Policy Statement, discussed below in section II.A. Since issuance of the Joint Policy Statement in 2006, the definition of "operation of a military dining facility" has been interpreted inconsistently. This rule proposes to implement the Joint Policy Statement which defines "operation of a military dining facility" to mean "the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42." We invite comments on the interpretation of this definition.

## **II. Discussion and Analysis**

The rule proposes to locate the DFARS guidance for food services in DFARS part 237, Service Contracting, along with the current guidance for contracting for various types of services such as educational services, laundry and dry cleaning, and mortuary services. Because the food services policy emphasizes the R-S Act requirement for competition and potentially affects more than one category of contract source, the new guidance is more appropriately placed in the section on services. The proposed rule amends the DFARS to clarify the application of the

R-S Act and the CFP statute to contracts for the operation and management of military dining facilities.

A. Joint Policy Statement.

Paragraph 1 of the Joint Policy Statement provides that defense appropriations shall be used to accomplish the defense mission. This mission shall be carried out by providing value and accountability to the taxpayers as well as supporting socioeconomic programs to the maximum extent practicable under the law. DoD has a military mission to maintain some level of in-house food service and military dining facility managerial capabilities to enable forward deployment operations, training, rotation, and career progression for military members. Contract services must enable DoD to feed the troops high quality food at a cost effective price.

Paragraph 2 states that "the Secretaries of the Military Departments concerned, as defined in 10 U.S.C. 101(a)(9), shall have the discretion to define requirements (e.g., contract statements of work, assignment of tasks and functions among workers in a facility) and make procurement decisions concerning contracting for military dining support services and the operation of a military dining facility and shall ensure that procurement decisions support the readiness of the Armed Forces."

Paragraph 3 recommends the enactment of legislation to create a "no-poaching" provision that would maintain contract opportunities current at that time. Section 856 of the NDAA for FY 2007 established the recommended "no-poaching" rule for contracts in effect at the date of enactment of section 856 (October 16, 2006).

Paragraph 4 establishes rules for new contract awards that were not covered by the "no-poaching" rule. Pursuant to subparagraph 4.a., new contracts will be competed under the R-S Act when "the [DoD] solicits a contractor to exercise management responsibility and day-to-day decision making for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42."

Subparagraph 4.b. provides that "[i]n all other cases, the contracts will be set aside for JWOD performance (or small businesses if there is no JWOD nonprofit agency capable or interested) when [DoD] needs dining support services (e.g., food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess attendants, or other services that support the operation of a dining facility) where [DoD] food service specialists exercise management



responsibility over and above those contract administration functions described in FAR part 42."

Subparagraph 4.c. provides that "[t]he presence of military personnel performing dining facility functions does not necessarily establish the inference that the Government is exercising management responsibility over that particular dining facility."

Paragraph 5 provides that "[i]n accordance with FAR part 8, if dining support services are on or will be placed on the Procurement List, any State licensing agency that is awarded a contract for operation of that military dining facility under the [R-S Act] shall award a subcontract for those services." DoD has implemented this requirement consistent with FAR clause 52.208-9, Contractor Use of Mandatory Sources of Supply or Services.

Paragraph 6 provides that "[i]n order to promote economic opportunities for blind vendors and to increase the number of blind persons who are self-supporting, the [R-S Act] requires that State licensing agencies provide blind persons with education, training, equipment and initial inventory suitable for carrying out their licenses to operate vending facilities in Federal buildings. Accordingly, through its rule-making procedures, [DoED] will encourage State licensing agencies who assert the [R-S Act] 'priority' for a multi-facility contract

for operation of military dining facilities to assign at least one blind person per military dining facility in a management role."

Paragraph 7 provides that "[t]he DOD shall continue to be able to use the 'Marine Corps model' for regional contracts for operation of military dining facilities at several installations or across State lines. In this model, the DoD may designate individual dining facilities for subcontract opportunities under the Small Business Act, the CFP statute, or other preferential procurement programs, and may designate some facilities in which military food service specialists may train or perform cooking or other dining support services in conjunction with contractor functions. State licensing agencies are eligible under the [R-S Act] to bid on contracts based upon this model."

Paragraph 8 provides guidance for affording the R-S Act priority. DoD contracts for operation of a military dining facility shall be awarded as the result of full and open competition, unless there is a basis for a non-competitive award to a single source and resulting direct negotiations with that source. When competing such contracts, DoD contracting officers shall give SLAs priority when: (1) the SLA has demonstrated it can provide such operation with food of high quality and at a fair and reasonable price and with food of high quality comparable to that available from other providers of cafeteria

services and comparable to the quality and price of food currently provided to military service members; and (2) the SLAs final proposal revision, or initial proposal if award is made without discussions, is among the highly ranked final proposal revisions with a reasonable chance of being selected for award.

Paragraph 8 also provides that "[t]he term 'fair and reasonable price' means that the State licensing agency's final proposal revision does not exceed the offer that represents the best value (as determined by the contracting officer after applying the evaluation criteria set forth in the solicitation) by more than five percent of that offer, or one million dollars, whichever is less, over all of the performance periods required by the solicitation." For the reasons explained in section II.B. below, this dollar limitation is not included in the DFARS.

Paragraph 9 provides that "[t]he contracting officer may award to other than the State licensing agency when the head of the contracting activity determines that award to the State licensing agency would adversely affect the interests of the United States, and the Secretary of Education approves the determination in accordance with the [R-S Act]." DoED has implemented this policy in its regulations (see 34 CFR 395.30).

Paragraph 10 committed the signatory parties to implementing the Joint Policy Statement in complementary regulations.

## B. Proposed Changes to DFARS.

The proposed rule proposes to amend DFARS 205.207(a) to require that the advertisement of a solicitation for the operation of a military dining facility in the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands shall state that the solicitation is subject to the R-S Act.

The rule proposes to amend DFARS 212.301 to add a new paragraph (c)(ii) to state that when issuing a solicitation for the operation of a military dining facility, as defined in 202.101, include in the evaluation criteria, factors or subfactors for determining if the SLA proposal is comparable to the quality and price available from other providers.

The proposed rule adds a new DFARS subpart 237.7X to address contracts for services that support military dining facility operation and contracts for the operation of military dining facilities. The "scope" statement in DFARS 237.7X00 explains that subpart 237.7X provides policy and procedures for soliciting and awarding contracts consistent with the R-S Act, the CFP statute, section 856 of the NDAA for FY 2007, and the Joint Policy Statement.

The definitions in DFARS 202.101 implement the Joint Policy Statement paragraphs 4.a. and 4.b., which identified when a

contract is for the operation of a military dining facility as distinguished from "dining support services." "Mess attendant services" (also known as "dining facility attendant services") are a subset of "dining support services." Specifically, the definition of "military dining facility" that was enacted in section 856 of the NDAA for FY 2007 and the definition of "State licensing agency" described in the R-S Act regulations at 34 CFR 395.1(v) are incorporated in the DFARS at 202.101 and 237.7X01, respectively. The proposed rule also defines "operation of a military dining facility," which is added to DFARS 202.101.

DFARS 237.7X02(a) implements paragraph 4.a. of the Joint Policy Statement by stating that all contracts for the operation of a military dining facility in the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands are subject to the R-S Act. By use of the word "all," DFARS 237.7X02(a) means these contracts are subject to the R-S Act even if the State licensing agency does not submit a proposal. DFARS 237.7X02(a) also implements paragraph 8 of the Joint Policy Statement and states the contracts for operation of a military dining facility shall be awarded using full and open competition (see 10 U.S.C. 2305). DFARS 237.7X02(b) states that contracts for dining support services are subject to the CFP statute, which is exempt from the Competition in Contracting Act

(CICA), and provides a cross reference to the implementing procedures at FAR subpart 8.7.

DFARS 237.7X03 provides guidelines for developing evaluation criteria for determining if the State licensing agency proposal is comparable to the quality and price available from other providers.

DFARS 237.7X04 adds a prescription for the proposed solicitation provision at DFARS 252.237-70XX, Operation of a Military Dining Facility. The prescription states that the provision will apply to solicitations, including solicitations using FAR part 12 procedures, for the acquisition of commercial items for operation of a military dining facility within the 50 states, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

The solicitation provision at DFARS 252.237-70XX, Operation of a Military Dining Facility, notifies offerors when a solicitation is subject to the R-S Act. The solicitation provision defines "operation of a military dining facility" and other terms necessary for notifying offerors about the applicability of the R-S Act to the solicitation. A State licensing agency will be given priority for award of the contract if it submits an offer that: (1) demonstrates it can provide the operation with food of high quality and at a fair

and reasonable price comparable to that available from other providers, and (2) has been judged to have a reasonable chance of being selected for award pursuant to the evaluation criteria in the solicitation.

In order for a SLA to receive the priority for operation of a cafeteria, 34 CFR 395.33(b) requires that: (1) the SLA's proposal must be within the "competitive range," and (2) must be ranked among those proposals that have a reasonable chance of being selected for final award.

Under FAR 15.306(c), the "competitive range" is established for the purpose of identifying those offerors with whom the procuring agency will open discussions. If discussions are to be conducted, CICA (see 10 U.S.C. 2305) requires that the procuring agency shall conduct discussions with all responsible offerors who submitted proposals determined to be in the competitive range, but as previously stated, inclusion in the competitive range is not sufficient to trigger the R-S Act priority for an SLA proposal. The SLA's proposal must also have a reasonable chance of selection for final award.

As a result, and as required by CICA and 34 CFR 395.33, each DoD solicitation for operation of a military dining facility must state its own evaluation criteria and basis for award independently derived for that individual location and acquisition. The solicitation will specify the means by which

the statutory priority will be afforded to the SLA's proposal, if it satisfies the evaluation criteria, the statement of work, and the requirements of the solicitation. Because each solicitation must be developed independently, the DFARS will not arbitrarily establish a price limitation that would apply to all solicitations.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule proposes to create a new provision, DFARS 252.237-70XX, Operation of a Military Dining Facility, to notify offerors when a solicitation is subject to the R-S Act. The R-S Act is not a covered law under 41 U.S.C. 1905-1907, because it was enacted prior to October 13, 1994. Therefore, 41 U.S.C. 1905-1907 do not exempt solicitations and contracts at or below the simplified acquisition threshold and for the acquisition of commercial items from the provisions of the R-S Act.

### **IV. Executive Orders 12866 and 13563.**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563



emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **V. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed rule will provide policy and procedures for soliciting and awarding contracts for the operation of a dining facility on a military installation pursuant to: (1) the Randolph-Sheppard Act (R-S Act); (2) the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; (3) the Joint Report and Policy Statement issued pursuant to the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006; and (4) the Committee for Purchase from People Who Are Blind or Severely Disabled (CFP) statute (41 U.S.C. 8501, et seq.).

The objective of the proposed rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the

application of the R-S Act and the CFP statute, formerly known as the Javits-Wagner-O'Day (JWOD) Act, to the operation and management of military dining facilities.

The R-S Act and the CFP statute have priority over the Small Business Act; therefore, the proposed rule has the potential to impact small businesses that provide these services. A review of contract awards and purchase orders in the Federal Procurement Data System for the period fiscal year 2011 through June 1, 2015, revealed that DoD made five new awards, including one purchase order, for dining services to five unique vendors. Of those awards, one award was made to a small business concern. Therefore, this proposed rule is not anticipated to impact a significant number of small entities.

The proposed rule does not impose any new reporting, recordkeeping, or other information collection requirements. The proposed rule is consistent with the DoED regulations that implement the R-S Act (see 34 CFR 395.1, et seq.).

Concerning dining support services (including mess attendant services), contracting officers shall follow the standard Federal Acquisition Regulation (FAR) subpart 8.7 and DFARS subpart 208.7 procedures for procuring dining support services pursuant to the CFP statute and, if applicable, the FAR part 19 and DFARS part 219 rules for small business set-asides.

Concerning the R-S Act priority for operation of a military dining facility, the proposed rule requires full and open competition. Competition is the best alternative for minimizing the impact on small entities.

DoD will consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015-D012), in correspondence.

#### **VI. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 202, 205, 212, 237, and 252**

Government procurement.

**Jennifer L. Hawes,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 205, 212, 237, and 252 are proposed to be amended as follows:

1. The authority citation for parts 202, 205, 212, 237, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## **PART 202—DEFINITIONS OF WORDS AND TERMS**

2. Amend section 202.101 by adding, in alphabetical order, the definitions of "Military dining facility" and "Operation of a military dining facility" to read as follows:

### **202.101 Definitions.**

\* \* \* \* \*

Military dining facility means a facility owned, operated, leased, or wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or similar dining facility operated with appropriated funds for the purpose of providing meals to members of the Armed Forces.

\* \* \* \* \*

Operation of a military dining facility means the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.

\* \* \* \* \*

## **PART 205—PUBLICIZING CONTRACT ACTIONS**

3. Amend section 205.207 by adding paragraph (a)(ii) to read as follows:

### **205.207 Preparation and transmittal of synopses.**

(a) \* \* \*

(ii) When advertising for the operation of a military dining facility, as defined in 202.101, within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands, the synopsis shall state that the solicitation is subject to the Randolph-Sheppard Act (20 U.S.C. 107, et seq.) (see 237.7X03).

\* \* \* \* \*

#### **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

4. Amend section 212.301 by—

- a. Redesignating paragraph (c) as paragraph (c)(i);
- b. Adding paragraph (c)(ii);
- c. Adding paragraph (f)(xv)(C).

The additions read as follows:

#### **212.301 Solicitation provisions and contract clauses for acquisition of commercial items.**

(c)(i) \* \* \*

(ii) When issuing a solicitation for the operation of a military dining facility, as defined in 202.101, include in the evaluation criteria factors or subfactors for determining if the State licensing agency proposal is comparable to the quality and price available from other providers (see 237.7X03).

\* \* \* \* \*

(f) \* \* \*

(xv) \* \* \*

(C) Use the provision at 252.237-70XX, Operation of a Military Dining Facility, as prescribed in 237.7X04.

\* \* \* \* \*

## **PART 237—SERVICE CONTRACTING**

5. Add subpart 237.7X to read as follows:

### **Subpart 237.7X—Services for Military Dining Facilities**

Sec.

237.7X00 Scope.

237.7X01 Definitions.

237.7X02 Policy.

237.7X03 Procedures for Randolph-Sheppard Act contracts.

237.7X04 Solicitation provision.

### **Subpart 237.7X—Services for Military Dining Facilities**

#### **237.7X00 Scope.**

This subpart provides policy and procedures for soliciting and awarding contracts pursuant to—

(a) The Randolph-Sheppard Act (20 U.S.C. 107, et seq.);

(b) The Committee for Purchase from People Who are Blind or Severely Disabled statute (41 U.S.C. 8501, et seq.);

(c) Section 856 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364); and

(d) The Joint Report and Policy Statement to Congress issued pursuant to section 848 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163).

**237.7X01 Definitions.**

As used in this subpart—

Dining support services means food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess attendant services, or any and all other services that are encompassed by, are included in, or otherwise support the operation of a military dining facility, other than the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility.

Mess attendant services (or “dining facility attendant services”) means those activities required to perform food line support such as setting up the serving lines, serving food and tearing down the serving line, preserving food for subsequent meals, and performing janitorial and custodial duties within dining facilities, including sweeping, mopping, scrubbing, trash removal, pot and pan cleaning, dishwashing, waxing, stripping, buffing, window washing, and other sanitation-related functions.

State licensing agency means the State agency designated by the Secretary of Education under 34 CFR part 395 to issue licenses

to blind persons for the operation of vending facilities on Federal and other property.

**237.7X02 Policy.**

(a) Randolph-Sheppard Act (20 U.S.C. 107 et seq.). (1) All contracts for the "operation of military dining facilities" (as defined at 202.101) within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands are subject to the Randolph-Sheppard Act. Except as provided in paragraph (a)(2) of this section, follow the procedures at 237.7X03.

(2) The procedures at 237.7X03 do not apply to any food services or related services that are identified on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

(b) Committee for Purchase from People Who Are Blind or Severely Disabled statute (41 U.S.C. 8501 et seq.). Contracts for dining support services (including mess attendant services) in a military dining facility where DoD food services specialists exercise management responsibility over and above those contract administration functions described in FAR part 42 are subject to the Committee for Purchase from People Who Are Blind or Severely Disabled statute. See FAR subpart 8.7.

**237.7X03 Procedures for Randolph-Sheppard Act contracts.**



(a) When issuing a solicitation for the operation of a military dining facility, include in the evaluation criteria factors or subfactors for determining if the State licensing agency proposal is comparable to the quality and price available from other providers.

(b) A State licensing agency shall be afforded priority for award of the contract if the State licensing agency has submitted a proposal that—

(1) Demonstrates that the operation of the military dining facility can be provided with food of a high quality and at a fair and reasonable price comparable to that available from other providers; and

(2) Has a reasonable chance of being selected for award as determined by the contracting officer after applying the evaluation criteria contained in the solicitation.

**237.7X04 Solicitation provision.**

(a) Except as provided in paragraph (b) of this section, use the provision at 252.237-70XX, Operation of a Military Dining Facility, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that are for operation of a military dining facility within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) Do not use the provision at 252.237-70XX in solicitations for any food services or related services that are identified on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

**PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Add section 252.237-70XX to read as follows:

**252.237-70XX Operation of a Military Dining Facility.**

As prescribed in 237.7X04, use the following provision:

OPERATION OF A MILITARY DINING FACILITY (DATE)

This solicitation is for the operation of a military dining facility.

(a) Definitions. As used in this provision—  
Military dining facility means a facility owned, operated, leased, or wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or similar dining facility operated with appropriated funds for the purpose of providing meals to members of the Armed Forces.

Operation of a military dining facility means the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.

State licensing agency means the State agency designated by the Secretary of Education under 34 CFR part 395 to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(b) A State licensing agency will be afforded priority for award of the contract if the State licensing agency has submitted a proposal that—

(1) Demonstrates the operation of the military dining facility can be provided with food of a high quality and at a fair and reasonable price comparable to that available from other providers; and

(2) Is judged to have a reasonable chance of being selected for award as determined by the contracting officer after applying the evaluation criteria contained in the solicitation.

(End of provision)

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